IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 644 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KADARBHAI KASAMBHAI PIRVANI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 644 of 2002

MR BHARAT T RAO for Petitioner No. 1

MR HARESH N JOSHI for Petitioner No. 1

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 16/04/2002

ORAL JUDGEMENT

Rule. Mr.K.C.Shah waives service of rule for respondent-State.

In pursuance of the order dated 5.4.2002 passed by this court applicant-accused is present and I.O., Mr.D.S.Thakore, P.I. is present through learned APP Mr.Shah before the court. The applicant-accused-Kadarbhai stated that in spite of best efforts he was unable to raise funds, therefore, some more time be granted. This request was vehemently objected by learned APP Shri Shah on the instructions from I.O., Shri Thakore. He submitted that because of the failure of the applicant to deposit amount, families of thousands of depositors of the bank are practically ruined. He submitted that enough indulgence is shown to him, therefore, the court should decide this matter on merits.

The petitioner is original accused in connection with the FIR registered as CR No. I 128/01 with Bhavnagar City `C' Division Police Station for the offence punishable under Section 406, 420, 409 and 34 IPC. He filed Criminal Misc. Application No.32/01 before the Sessions Court, Bhavnagar for anticipatory bail, which was granted on 16.8.2001 with conditions. Thereafter, he filed regular bail application being Criminal Misc. Application No.799/01 before the Sessions Court, Bhavnagar for regular bail and the learned Judge granted bail by his judgment and order dated 5.9.2001 on certain terms and conditions mentioned in it. In all 7 conditions were imposed by the learned Sessions Judge :-

(1) The accused shall remain present before the police office as and when required for interrogation.

(2) He shall not try to tamper with the evidence of prosecution witnesses directly or indirectly.

(3) The accused shall not leave Bhavnagar District without prior permission of the Sessions Court.

(4) The accused shall mark his presence on every Monday between 8.00 a.m. to 1.00 p.m. at `C' Division Police station.

(5) The applicant-accused shall give complete address of his residence to the concerned police station.

(6) The accused shall deposit his passport with `C' Division Police Station.

(7) He shall deposit amount within 3 months as ordered in anticipatory bail application.

The State of Gujarat moved Criminal Misc. Application No.1082/01 on 11.12.2001 before the learned Sessions Judge, Bhavnagar under Section 439(2) of Cr.P.C. for cancellation of bail granted to the petitioner-accused on the ground that he has committed breach of the conditions imposed in the bail order. The applicant-accused was duly served with the notice of the application for cancellation of bail. The learned Sessions Judge by his impugned judgment and order dated 23.1.2002 cancelled the bail granted to the applicant-accused as he was of opinion that the applicant-accused committed breach of the conditions imposed in the order in his bail order.

This impugned order is challenged by the applicant-accused by way of this application.

Having carefully gone through the impugned order passed by the learned Judge cancelling the bail granted to the accused on the ground of breach of conditions imposed in the bail order, it cannot be said that the learned Judge has committed any error in cancelling the bail. In fact, the learned Senior Advocate, Shri Thakkar, appearing for the petitioner-accused conceded that there is a breach of conditions but his submission was that on breach of such technical conditions the learned Judge should not cancel the bail. He also submitted that it was not proper on the part of the learned Judge to impose conditions in anticipatory bail as well as regular bail to deposit the amount within three months from the date of the order. In support of his submission, he has relied upon the judgment of the Hon'ble Supreme Court in the case of Sandeep Jain Vs. National Capital Territory of Delhi reported in (2000)2 SCC 66. In Sandeep Jain's case (supra), the Hon'ble Supreme Court observed that the learned Magistrate imposing the onerous conditions that an accused at the FIR stage should pay a huge sum of Rs.2 lakhs to be set at liberty and on default in payment of that amount the appellant is to languish in jail for more than 10 months. The Hon'ble Supreme Court on facts of that case ordered to release the accused on bail.

If this was the only breach of condition, then

perhaps this court would have interfered with the impugned order passed by the learned Judge but practically, the applicant-accused committed breach of almost all the conditions imposed by the learned Judge by releasing him on bail.

It is true that later on applicant-accused surrendered his passport, which has already expired on 12.4.2002. Late surrender of the passport might have been taken into consideration, but as stated earlier practically almost all conditions imposed by the learned Judge were breached by the applicant-accused after he was enlarged on bail. When the application is moved for cancellation of bail before the learned Judge and if the learned Judge after considering the entire material on record comes to the conclusion that the accused has committed breach of conditions and cancelled the bail of the applicant-accused, then certainly this court would not interfere with such discretionary order in this application.

Before parting, I must state that to enable the applicant-accused twice opportunity was given on the emotional request made by learned counsel Shri Thakkar for the applicant-accused to raise the funds and in all 4 weeks was granted to him, but unfortunately the applicant-accused was not able to raise any funds to show his bona fide. Today, once again he had prayed for one month's time which was vehemently objected to by the I.O., on the ground that families of thousands of depositors of the bank are practically ruined and looking to the past record of the applicant-accused, I am of the considered opinion that any further opportunity given to the applicant would be meaningless.

At this stage, I must state that another complaint is filed against the applicant for the similar offences which runs into crores of rupees, as stated by learned APP Shri Shah. He produced before the court copy of the said complaint, which is ordered to be taken on record.

In view of the above discussion, I do not see any reason to interfere with the impugned order passed by the learned Judge cancelling the bail of the applicant-accused and accordingly this petition fails and is dismissed. Rule discharged. Ad-interim relief granted earlier stands vacated forthwith.

At this stage, a request was made by Sr. Advocate Shri Thakkar to grant one week's time to enable

the applicant-accused to surrender. As according to Mr.Thakkar, if one week's time is granted, then he can raise some funds. The said request was vehemently objected to by learned APP Shri Shah. Considering the peculiar facts and circumstances of the case, the request to grant time to surrender is rejected. The I.O., Shri Thakore, who is present before the court can effect the arrest of the applicant-accused, who is present before the court, outside the court premises.

(B.J.Shethna, J.)
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